IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4657 of 2001

to

FIRST APPEAL No 4669 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

and

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANDAJI LAKHAJI DEAC.THRO' HIS LEGAL HEIRS

Versus

SP.LAND ACQUISITION OFFICER

Appearance:

MR KM SHETH for Petitioners No. 1-1/2

RULE SERVED for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 2

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 20/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. All these appeals are decided by this common judgment as they are arising out of impugned common judgment and award dated 11.7.2001 passed by the learned 4th Joint Civil Judge (S.D.), Nadiad in Land Acquisition Reference Case Nos.289 to 301 of 1995 (main Reference Case No.289/95). Deputy General Manager (ONGC), Ahmedabad submitted his proposal to acquire lands of village Pinglaj of taluka Matar, Dist.Kheda for the purpose of D-Solter plant by letter dated 26.12.1990 addressed to the Special Land Acquisition Officer (ONGC), Ahmedabad. Section 4 notification came to be published under the Land Acquisition Act on 15.9.1992 followed by notification under Section 6 dated 14.7.1993. The Special Land Acquisition Officer fixed market price of the lands @Rs.8/= and Rs.10/= per sq.mtr., and for Kharabha land he fixed Rs.1/= per sq.mtr. The said award was passed under Section 11 on 31.3.1995.

#. Aggrieved by the aforesaid award the appellants-claimants filed aforesaid reference cases before Reference Court claiming Rs.100/= sq.mtr., in all, for their lands. However, Learned Judge by his impugned common judgment and award dated 11.7.2001 awarded additional sum of only Rs.30/= per sq.mtr. and not the remaining amount as claimed by the claimants. Hence, the claimants have filed all these appeals.

#. Learned counsel Shri Sheth appearing in all these appeals for the appellants-claimants vehemently submitted that the learned Judge committed grave error in not awarding additional compensation @Rs.51/= per sq.mtr. to the claimants as awarded by the 3rd Extra Assistant Judge in his common judgment and award dated 11.7.1998 in Land Acquisition Case No.375/94 and other allied cases which was confirmed by this court in First Appeal No.1431 of 1999. In the instant case, on behalf of claimants one Sirajmiya Nathumiya claimant of LAQ Case No.295/95 was examined at Ex.53A. In his evidence he has stated on oath that all lands of the claimants were fertile Jirayat lands. They have facility of irrigation from the Government Tube-wells as well as private tube-wells and

the lands are also irrigated by Kharikat canal. All the claimants are getting three times crop and they got good income. He has also deposed that their village "Pinglaj" is near to Ahmedabad on National Highway No.8. Bareja village is just adjacent to their village. There is a facility of good education from the primary section to secondary. They got facility of Milk Cooperative Society, Gujarat Electricity Sub-station, S.T. Depot etc. In his evidence he has produced the abstracts of 7 and 12 at Ex.59 to 105 and also produced copy of judgment delivered by 3rd Extra Assistant Judge, Ahmedabad (Rural) in LAQ Case No.375/94 at Ex.106. The said judgment was confirmed by this court in First Appeal No.1431 of 1999 at Ex.107.

#. On behalf of opponents Shri Ibrahim Masudbhai Dhanji Ex.111 was examined.

#. Considering the entire oral as well as documentary evidence led by both the sides, the learned Judge came to the conclusion that the claimants are entitled to get additional sum of Rs.30/= per sq.mtr. and not Rs.51/= per sq.mtr. as per the judgment of the 3rd Extra Assistant Judge, Ahmedabad (Rural) delivered in LAQ No.375/94 and allied cases, which were confirmed by this court in First Appeal No.1431/99.

#. For not relying upon the judgment of 3rd Extra Assistant Judge, Ahmedabad (Rural) in Land Acquisition Case No.375/94 confirmed by this court in first Appeal No.1431 of 1994, the leaned Judge gave the reason that the lands of Pinglaj were far away from the lands of their case decided by the 3rd Extra Assistant Judge, Ahmedabad (Rural) confirming appeal by this court of Bareja. Moreover, in village Pinglaj there was no such facility of hospital, railway station and it was at a distance of 25 km. from Kheda and there are more facilities in village Bareja than Pinglaj. The learned Judge also held that as per the evidence of witness Ibrahambhai Masudbhai Dhanji Ex.111, the lands of village Pinglaj are of `C' category. Ultimately, the learned Judge held that claimants of Pinglaj are not entitled for compensation at par with the lands of Bareja, therefore, they would be entitled for only additional sum of Rs.30/= per sq.mtr. and not Rs.51/= per sq.mtr.

#. We must state that learned counsel Shri Sheth vehemently submitted that the learned Judge was wholly in error in coming to the conclusion that the lands of village Pinglaj are far away from lands of village Bareja and to substantiate his submission he tried to produce

the certified copies of both villages, when these matters were heard by us last on 15.2.2002. The said maps were never produced before the trial Court. However, the said maps are duly certified maps. We have directed Mr.Sen, learned AGP appearing for State of Gujarat to produce the true copies of the maps of both the villages Bareja and Pinglaj so as to have the idea about the distance between two villages. Accordingly, learned AGP produced before us maps of both the villages Pinglaj as well as Bareja. The maps are ordered to be taken on record. Looking at the maps even Mr.Sen as well as Mr.Ajay Mehta appearing for acquiring body had to concede that there was a common boundary between the lands of two villages i.e. Pinglaj and Bareja though they are adjacent to one and same. Not only that from the map it clearly appears that the lands which were acquired at village Bareja were adjacent to the lands of village Pinglaj. In that view of the matter, we have no hesitation in holding that the learned Judge was wholly in error in holding that the lands of village Pinglaj are far away from village Bareja.

#. Learned counsel Shri Sheth for the claimants relying upon the judgment of the Hon'ble Supreme Court in the case of Thakarsibhai Devjibhai Vs. Executive Engineer reported in AIR 2001 SC 2424 vehemently submitted that when there is no much distance between the lands of village Pinglaj and, Bareja, the learned Judge ought to have awarded additional sum of Rs.51/= per sq.mtr. for the acquired lands. In case of Thakarsibhai's (supra) the Land Acquisition Officer awarded Rs.4.50 per sq.mtr. against the claim of Rs.16/= per sq.mtr. On the reference being made under Section 18 of the Land Acquisition Act, the Reference Court awarded additional sum of Rs.58/= per sq. mtr. State of Gujarat filed appeals before this court wherein, the amount was reduced at Rs.10/= per sq.mtr. and the claimants were awarded Rs.48/= per sq.mtr. Aggrieved by this, the claimants had gone in SLP before the Hon'ble Supreme Court and while allowing their appeals, Hon'ble Supreme Court held that:-

"the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex.16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition is of a large

area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landowners holdings are of small area. Even otherwise visioning in the line with submission for the State we find Ex.16 is about two hectares of land which cannot be said to he of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex.16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under Ex.16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Ex.16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs.10/= per sq.mtr. cannot be sustained".

#. However, learned Counsel Shri Ajay Mehta appearing for the Acquiring Body-respondent No.2 vehemently submitted that the Hon'ble Supreme Court has not considered its previous judgement in case of Basant Kumar Vs. Union of India reported in (1996) 11 SCC 542 wherein Hon'ble Supreme Court observed that treating entire village as one unit and uniformly determining compensation on that basis is not sustainable. He submitted that Basant Kumar's case (supra) was decided by the Division Bench of Hon'ble Supreme Court consisting of three Hon'ble Judges whereas, Thakarsibhai's case (supra) was decided by Division Bench of two Hon'ble Judges of Hon'ble Supreme Court. If that judgment was brought to the notice of the Hon'ble Supreme Court in Thakarsibhai's case (supra), perhaps Their Lordships might not have taken that view. He, therefore, submitted that the earlier judgment of the Hon'ble Supreme Court, which is of Larger Bench, should be relied upon by this court and

not the later judgment of two Hon'ble Judges, which has not considered the previous judgment.

##. It is true that in Thakarsibhai's case (supra), earlier judgment of the Hon'ble Supreme Court in Basant Kumar's case (supra) was not brought to the notice of Their Lordships and later judgment of Hon'ble Supreme Court in Thakarsibhai's case (supra) was of three Hon'ble Judges. However, in the instant case, Ibrahambhai Masudbhai Dhanji Ex.111, who was examined as witness No.1 on behalf of respondent No.2, has in terms admitted in his cross-examination that "it is true that when the lands of Pinglaj were acquired, at that time, there was only one boundary wall between the lands of village Pinglaj and Bareja." He further admitted that "it is true that after the lands of `Bareja' were acquired Rs.8/= and Rs.13/= per sq.mtr. were paid and similarly, Rs.8/= and Rs.13/= per sq.mtr. were awarded for the lands of `Pinglaj' Village". In view of this clear admission of witness Ibrahimbhai Masudbhai Dhanji, we are not required to go into the aforesaid controversy as to whether the judgement delivered by Hon'ble Supreme Court in case of Thakarsibhai (supra) will have any application to the facts of the present case or not? However, Mr.Mehta vehemently submitted that no reliance can be placed upon the evidence of this witness Ibrahimbhai Masudbhai Dhanji because the Land Acquisition Officer has stated totally differently in his award. We are not prepared to accept this submission because the evidence given on oath has to be preferred than the statement made in the award of the Land Acquisition Officer. It may be stated that Ibrahimbhai Masudbhai Dhanji was witness of opponent No.2 only and if he has committed any mistake in his cross-examination made at the instance of claimants then, they could have certainly clarified it by way of re-examination. But, no such clarification was asked for, therefore, his admission in cross-examination has to be relied upon.

##. When it is proved by the claimants that the lands of village `Bareja' were adjacent to the lands of village `Pinglaj' then we are of the considered opinion that the earlier judgment of 3rd Extra Assistant Judge, Ahmedabad (Rural) in land acquisition cases No.375/94 and allied cases, which were confirmed by this court in First Appeal No.1431/99 will apply with full force and the learned Judge had no other option but to award additional compensation of Rs.51/= sq.mtr. on the basis of the said judgment to the present applicants-claimants.

##. In view of the above discussion, all these appeals

are allowed and it is held that the appellants-claimants are entitled to get additional sum of Rs.51/= instead of Rs.30/= per sq.mtr. awarded by learned Judge as an additional compensation for the lands acquired over and above compensation already awarded by Land Acquisition Officer together with 30% solatium and running interest @9% p.a. for the period of one year from the date of award i.e. 31.3.1995 and thereafter @50% p.a. till the entire amount is fully paid or deposited.

##. In view of the judgment of recent Constitutional Bench of the Hon'ble Supreme Court in case of Sunder Vs. Union of India reported in 2001(3) GLH 446, all the claimants are also entitled for interest on solatium amount.

##. All the appellants-claimants are also entitled to get 12% increase on the market price of the acquired lands for the period from the date of notification under Section 4(1) of the Act i.e. 15.9.1992 till the date of the award passed by the Land Acquisition Officer i.e. 31.3.1995 under Section 23(1-A) of the Land Acquisition Act. Decree be drawn accordingly. All these appeals are allowed with costs. The respondents are directed to deposit the additional amount awarded by this court and other remaining amount, if not deposited so far, within three months before the trial court from the date of drawing of decree. On depositing the said amount the trial court shall pay the same to all the respondents-claimants by way of account payee cheques in their names respectively.

(B.J.Shethna, J.)

(N.G.Nandi, J.)

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